IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FOURTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 22853 of 2004

Between:

Kompella Venkata Satya Subbaraya Sastry, S/o Venkata Subrahmanya Sarma, Sri Venkateswara Institute of Higher Vedic Studies, Tirupathi, Chittoor District.

..... PETITIONER

AND

1 The Executive Officer, T.T.D., Tirupathi, Chittoor District.
2 The Government of Andhra Pradesh, rep. by its Principal Secretary, Revenue (Endowments - III) Department, Secretariat, Hyderabad.
3 The Government of Andhra Pradesh, rep. by its Chief Secretary, Secretariat, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus, declaring the impugned Proc.Roc.No. B3/9518/99 dt. 25-9-2004 and its connected Removal Proc,.Roc.No. B3/9518/99 dt. 18-11-2004 issued by the 1st respondent as illegal, arbitrary, discriminatory, bad in law, and opposed to the constitutional provisions and violative of principles of natural justice and consequently declare that the petitioner is entitled to continue the petitioner as Project Officer, S.V.I.H.V.S. Tirupathi, with all consequential benefits.

Counsel for the Petitioner:MR.K.AMARENDER RAJU

Counsel for the Respondents: GP FOR ENDOWMENTS

The Court at the admission stage made the following :

The Hon’ble Sri Justice

K.C. Bhanu

W.P. No. 22853 of 2004

O R D E R:

Challenging the proceedings dated 25.9.2004 and its connected removal proceedings Roc.No.B3/9518/99 dated 18.11.2004 issued by the 1st respondent as illegal, arbitrary and discriminatory, the present writ petition is filed.

The T.T.D. sent proposals to the Government for according permission to set up the Organisation called Veda-Parayanam and accordingly the State Government granted permission vide G.O.Ms.No.219 Revenue (Endt.III) dated 28.1.1998. Thereafter, in pursuance of G.O.Ms.No. 717 Rev. (Endt.III) dated 6.10.1999 the Government created a post of Director General with the rank equivalent to that of Vice Chancellor of a University. Accordingly a Director General was appointed on tenure basis for a period of three years. After completion of the tenure, the T.T.D. has sent another proposal to the Government requesting for down-gradation of the post of Director General to that of Reader of a University for various reasons. The Government after careful examination have issued orders re-designating the post of Vice-Chancellor of a University as 'Project Officer' which is equivalent to the post of Reader of a University by virtue of G.O.Ms.No.361 dated 22.6.2002 along with the method of recruitment and qualifications. The Government also issued G.O. 362 dated 22.6.2002 for

constitution of recruitment committee for recruiting the said post. In pursuance of the notification issued inviting applications from the aspiring candidates to fill up the post of Project Officer, the petitioner applied and was selected vide proceedings dated 30.9.2002 by the selection committee and accordingly he was discharging the duties. While so, the 1st respondent issued proceedings dated 25.9.2004 prior to completion of his probation to avoid declaration of his probation inventing a method that his services were not up to the mark even without conducting enquiry and felt it necessary to dispense with the post of Project Officer, but on humanitarian grounds and taking lenient view to utilize the services of the petitioner in S.V.V.V.S. College, Secunderabad to work under the control of the Principal. Therefore, the petitioner states, it is clear that the post of Project Officer is continuing at the wishes of the Executive Officer though it was sanctioned by the Government after careful examination and therefore the arbitrary action of the 1st respondent forced him to work under the Principal, which is clearly illegal. The 1st respondent issued proceedings dispensing with the post of Project Officer without consulting the Government. If the action of the 1st respondent is allowed, it would not only spoil the spirit and purpose of establishment of the Institution. The petitioner further states that he made an application to the Government on 27.9.2004 and requested to continue him as Project Officer. When the matter is pending consideration before the 1st respondent, the impugned proceedings dated 18.11.2004 was passed removing him from service without any justification. This proceedings was also issued without consulting the Government. Therefore, he prays to allow the writ petition.

The 1st respondent filed the counter affidavit admitting the G.Os. issued by the Government for creation of post of Project Officer. It is also admitted that the respondent – Devasthanams in its Resolution No.48 dated 9.4.2002 approved the proposals to down grade the status of the post of Director General and to re-designate the post of Director General as Project Officer. It is stated that the petitioner was appointed purely on temporary basis in the time scale of pay and in the appointment order itself it was specifically mentioned that the appointment is purely temporary and liable for termination at any time without any prior notice. During the probation period, the services and behaviour of the petitioner were not up to the satisfaction of the respondent-Devasthanams as he used to leave Headquarters very often for his personal benefit without obtaining prior permission of his superior under the pretext of official tour. It is submitted that no fruitful results have come with the tours stated to have been undertaken by the petitioner. As per G.O.Ms.No. 1060 dated 24.10.1989, the Executive Officer of T.T.D. is the competent authority to fill up the posts. It is further stated that the purpose of appointment of the petitioner as Project Officer was not served and therefore it was felt that there is no necessity to continue the petitioner in such a higher cadre post in the interest of the Institution. Therefore it has been decided by the 1st respondent to utilize his services at SVVVS College, Secunderabad on humanitarian grounds and accordingly the petitioner was relieved of his duties as Project Officer on 27.9.2004. The said action is not at all arbitrary and illegal. The said orders were issued by the 1st respondent as per the decision taken by the T.T.D. Board in its Resolution No. 262 dated 26.8.2004. Further, in the Recruitment Rules there is a provision for

loan of service of a Lecturer of a recognized University. Therefore, the orders of the Government are necessary for certain category of posts right from lower to higher cadre and this is not a specific post for which orders from the Government were sought. It is further stated that nowhere it is stated that the parameters of University Grants Commission have been taken into account while downgrading the said post. The T.T.D. Board in its Resolution No.262 dated 26.8.2004 resolved to utilize the services of the petitioner at SVVVS College, Secunderabad. Therefore, the 1st respondent-Devasthanams has not ignored any procedure and in fact acted in the interest of the Institution on humanitarian grounds. Though the appointing authority has power to extend the period of probation or to terminate probation of the petitioner and discharge him from service, on humanitarian grounds the petitioner was ordered to work at SVVVS college, Secunderabad, but the petitioner did not join at the new station and disobeyed the order. Hence the TTD Board in its Resolution 350 dated 15/16.10.2004 resolved to issue fresh notice. The petitioner acknowledged receipt of the said notice on 27.10.2004 but has not joined duties till 9.11.2004. In view of the indisciplined behaviour of the petitioner in disobeying the order of the 1st respondent, as per the Board Resolution the petitioner was removed from service on 18.11.2004. It is further stated that the 1st respondent is the appointing authority to all posts in TTD except for posts stated under Section 106 of Act 30/87 and the post of Project Officer is not covered under the said Section and hence permission of the Government is not necessary to terminate the services of the petitioner. Hence, the 1st respondent prays to dismiss the writ

petition.

Learned counsel for the petitioner contended that the impugned orders have been passed with a view to harass the petitioner with a mala fide intention and without following the principles of natural justice and without notice and opportunity the petitioner was removed from service; that there is no post of Project Officer of equivalent post under the control of Principal, SVVVS College, Secunderabad; that the impugned orders have been passed without consulting the Government, and hence he prays to set aside the impugned proceedings. Learned counsel for the petitioner also relied on some decisions, which will be referred to at appropriate time.

On the other hand, learned standing counsel appearing for the 1st respondent contended that as the 1st respondent felt that it was not necessary to continue the petitioner in a higher cadre post in the interest of the Institution, it has decided to utilize the services of the petitioner at SVVVS College, Secunderabad on humanitarian grounds; that the order of posting him at Secunderabad does not involve any reduction in pay or any other benefits; that since the 1st respondent is the appointing authority, there is no need to obtain any prior permission for removal of Project officer and only for creation of any post the permission is required and that for about 45 days the petitioner did not join in pursuance of the directions of the 1st respondent. Therefore, after giving reasonable opportunity the petitioner was discharged since his appointment is purely temporary and his probation has also not been declared and hence there are absolutely no grounds to interfere with the impugned proceedings.

The Government of Andhra Pradesh accorded permission for establishment of Sri Venkateswara Institute of Higher Vedic Studies and for creation of the post of Director General in the rank of Vice Chancellor of a University to head and administer the Institution. One of the important objectives and functions of creation of the said Institute is the preservation and propagation of Indian Cultural and Religions Heritage. Thereafter, admittedly the said post of Director General was down-graded by creation of post of Project Officer as per G.O.Ms.No.361 dated 22.6.2002. The Committee consisting under the Chairmanship of Joint Executive Officer with Secretary, DPP and District Educational Officer, TTD and some others was constituted for recruitment of Project Officer to SVIHVS vide G.O.Ms.No. 362 dated 22.6.2002. The 1st respondent issued notification to fill up the post of Project Officer. As the petitioner was fully eligible and qualified, he was selected to the said post vide proceedings dated 30.9.2002 by the selection committee. The probation of the petitioner was not declared till the date of impugned proceedings. As seen from the proceedings of the Executive Officer, TTD dated 30.9.2002, the appointment of the petitioner is purely temporary and liable for termination at any time without prior notice and without assigning any reasons therefore. The petitioner has jointe duty as Project Officer on 16.10.2002. He acted under the administrative control of DPP. As the Institutions which were looked after by the Project Officer as per Proceedings Roc.No.B3/9518/99 dated 3.11.2002 were previously under the control and supervision of Secretary, DPP. As these projects were functioning smoothly, the

T.T.D. felt that there is no need for recruitment of another senior officer to manage the Institute at present. Therefore, the matter was placed before the TTD Board. The TTD Board vide Resolution No.262 dated 26.8.2004 resolved as follows:

> "Discussed the subject in detail. It is felt that there is no need for full-fledged project officer at present. Since the probation of K.V.S.S. Sastry recruited as Project Officer, S.V.I.H.V.S. has not been declared yet, it is decided to use his services as Principal or Lecturer in S.V.V.V.S. College, Hyderabad. Activities of S.V.I.H.V.S. if any will be looked after by the Secretary, D.P.P. as was done earlier".

The said resolution has not been challenged. No motives of mala fides are attributed to the Board Members of T.T.D. The T.T.D. is the competent authority to fill up the post of Project Officer as per Rule 5(i) of the TTD Service Rules issued vide G.O.Ms.No.1060 dated 24.10.1989, which reads:

> "all powers assigned to the Government under Rules (i.e. Fundamental Rules, A.P. State Subordinate Service Rules, A.P. Civil Service (Conduct) Rules 1964, AP Civil Service (CCA Rules) shall be exercised by the Board of Trustees. All powers vested in the Head of Department in the above rules shall be exercised by the Executive Officer, TTDs. The Executive Officer shall be the appointing authority in respect of all the posts except the posts for which Government is the appointing authority".

Such is the case, there is no need to the 1st respondent to take permission from the Government for abolition of the post of

Project Officer, which is admittedly created by the Government. No rule or regulation is brought to the notice of this court that the Government alone can abolish the post of Project Officer. As a matter of fact, the T.T.D. also did not abolish the post of Project Officer. As the T.T.D. felt that there was no need for a full-fledged officer at present, it is for the Board of T.T.D. to take appropriate decision whether there should be full-fledged officer or not depending upon the work load. The resolution also do not indicate that the post of Project Officer has been abolished. In such view of the matter, there is no need for the respondents to obtain prior permission from the Government. Therefore, the contention of the petitioner is untenable on this ground.

It is further stated that with a mala fide intention the impugned proceedings have been passed. The impugned proceedings have been passed in pursuance of the resolution made by the Board. No specific mala fides have been attributed to the Board as a whole or its members individually. Therefore, it cannot be said that the action of the respondents is mala fide. There should be a factual foundation and it must be substantiated with material. There is no such material.

With regard to the other contention that no notice and opportunity was given before the removal order is passed. The petitioner was directed to work under the control of Principal, SVVVS College, Secunderabad and accordingly he was relieved from duties as Project Officer on the forenoon of 27.9.2004. In pursuance of the said order, the petitioner did not join. Then the matter was placed before the T.T.D. which passed the resolution No.350 dated

15/16.10.2004 as follows:

> "fresh notice may be given to join at new station within seven days failing which he will be discharged".

A clear notice dated 24.10.2004 was issued which was acknowledged by the petitioner on 27.10.2004. Thereafter the petitioner did not join his duties till 9.11.2004. As the petitioner disobeyed the order of the 1st respondent dated 25.9.2004, he was discharged. By passing this order dated 25.9.2004 directing the petitioner to work under the control of Principal, SVVVS College, Secunderabad, his pay or emoluments have not been affected at all. The Board's proceedings dated 15/16.10.2004 have not been challenged on any ground. As the petitioner exhibited gross disobedience and indiscipline, it is not desirable to continue him as an officer in the T.T.D. and therefore the petitioner was removed from service. The petitioner is not an approved probationer or his probation has not been declared satisfactorily. His appointment order itself shows that the appointment is purely on temporary basis and liable for termination without notice or even without assigning any reasons. So, the contention that no notice or opportunity was given before passing the impugned order is without any basis. On humanitarian grounds he was posted to work under the control of Principal, SVVVS College, Secunderabad. Since he was directed to work in the said college, he is bound to obey the orders of the appointing authority. Government is nothing to do with the duties and functions of the T.T.D. The petitioner instead of giving any representation with regard to the grievances if any to the T.T.D.

Board, sent a representation to the Government on 25.9.2004. A vague allegation has been levelled against the Executive Officer stating that the post of Project Officer is continuing at the wishes of the Executive Officer. It is not the Executive Officer who has taken the decision not to have a full-fledged officer at present but it is the Board who has taken such decision and terminated the services of the petitioner since he did not join the new post.

Learned counsel for the petitioner relied upon a decision of the apex court in **Karnataka State Road Transport Corporation v. S. Manjunath** wherein it is held:

> "Where an employee at the end of the probationary period automatically gets confirmation in the post or whether an order of confirmation or any specific act on the part of the employer confirming the employee is necessary, will depend upon the provisions in the relevant Service Rules relating to probation and confirmation. In those cases where the Rules provide for a maximum period of probation beyond which probation cannot be extended, this court has held that at the end of the maximum probationary period there will be a deemed confirmation of the employee unless Rules provide to the contrary.
>
> However, even when the Rules prescribe a maximum period of probation, if there is a further provision in the Rules for continuation of such probation, beyond the maximum period, the courts have made an exception and said that there will be no deemed confirmation in such cases and the probation period will be deemed to be extended.
>
> The other line of cases deals with Rules where there is no maximum period prescribed for probation and either there is a Rule providing for extension of probation or

> there is a Rule which required a specific act on the part of the employer (either by issuing an order of confirmation or any similar act) which would result in confirmation of the employee. In these cases unless there is such an order of confirmation, the period of probation would continue and there would be no deemed confirmation at the end of the prescribed probationary period".

From the above decision it is clear that at the end of maximum probation period there will be deemed confirmation of the employee unless the Rules provide to the contrary. Secondly, when there is a provision in the Rule for continuation of such probation beyond the maximum period, there will be no deemed confirmation and in such case an order of confirmation is necessary. If the Rules provide that the period of probation cannot be extended beyond the maximum period there will be a deemed confirmation at the end of the maximum probationary period. When the post is created in this case, the G.O. would go to show only the method of recruitment. Therefore, the T.T.D. Service Rules would govern the case of the petitioner. As per the Rules, the probation of the petitioner has not been declared. As per Rule 7 of the T.T.D. Recruitment Rules, a probationer may be terminated at any time in terms of his appointment as clearly mentioned in the appointment order itself. Therefore, before completion of two years the petitioner was terminated, which is not contrary to the Rules.

The learned counsel for the petitioner relied upon another decision of the apex court in **Hardeep Singh v. State of Haryana** wherein it is held:

> "If such an order or dismissal/removal from service is made without following the procedure envisaged in Article 311(2) of the Constitution of India as well as rule 16.24 (ix) (b) of the Punjab Police Rules, 1934 the same will be illegal and bad and liable to be quashed".

The above decision has no application to the facts of this case and the same is not shown to have been by way of punishment. The petitioner was given an opportunity to work at SVVVS College, Secunderabad but he disobeyed the orders. If he had any grievance, he should have brought it to the notice of the Board after joining.

Learned counsel for the petitioner also relied upon another decision in **Dipti Prakash Banerjee v. Satvendra Nath Bose National Centre for Basic Sciences, Calcutta** wherein it is held that where the findings are arrived at without conducting a regular departmental enquiry, then the termination order will be vitiated. It is not the case of misconduct as such. Because the petitioner disobeyed the orders of the Board, the impugned order is passed. Hence the above decision has no application.

Learned counsel for the petitioner also relied upon another decision in **Chandra Prakash Shahi v. State of U.P.** wherein it is held:

> He whole case law is thus based on the peculiar facts of each individual case and it is wrong to say the decisions have been swinging like a pendulum; right, the order is valid; left, the order is punitive. It was urged before this court, more than once including in Ram Chandra Trivedi's case (supra) that

> there was a conflict of decisions on the question of order being a simple termination order or a punitive order, but every time the court rejected the contention and held that the apparent conflict was on account of different facts of different cases requiring the principles already laid down by this court in various decisions to be applied to a different situation. But the concept of “motive” and “foundation” was always kept in view”.

Even applying the ratio laid down in the abovementioned case, there is no factual foundation with regard to the motive and further more a notice has been given to the petitioner before passing the termination order. It is a clear case of dereliction of duties by the petitioner. He is bound to follow the instructions or orders passed by the appointing authority. If he has got any grievance with regard to his posting, then he can as well make an application to the appointing authority. In spite of giving a clear direction to the petitioner to join at a particular place, he disobeyed the orders and did not join. Therefore, the Board had to take a decision against him, which cannot be said to be perverse or contrary to any of the Rules governing the service conditions of the petitioner or the appointment order.

For the aforesaid reasons, the writ petition is totally devoid of merit and it is accordingly dismissed.

K.C. Bhanu, J.

Date: 04--02—2005.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Executive Officer, T.T.D., Tirupathi, Chittoor District.
2 The Government of Andhra Pradesh, rep. by its Principal Secretary, Revenue (Endowments - III) Department, Secretariat, Hyderabad.
3 The Government of Andhra Pradesh, rep. by its Chief Secretary, Secretariat, Hyderabad.

5. Two C.Charge sheet. to Government Pleader for Endowments, High Court Buildings, Hyderabad (OUT).

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